IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1439 of 2007

Raman .. Petitioner

Vs

1. The District Collector and
District Magistrate, Villupuram
District, Villupuram.

2. The Secretary to Govt.,
Govt. of Tamil Nadu,
Prohibition and Excise Dept.,
Fort St. George, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus Calling for the records of the firs respondent herein in C2/36540/2007 dated 19.8.2007 setting aside the order of detention passed against me and produce the detenu before the court setting the detenu by name Raman, son of Hari Krishna Gounder, the petitioner herein at Liberty, now detained in Central Prison, Cuddalore.

For Petitioner : Mr.S.Sasikumar
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

ORDER

(Order of the Court was made by P.D.DINAKARAN,J.)

The first respondent herein clamped an order of detention as against the petitioner herein, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.Challenging the abovesaid detention, the petitioner, who is now confined at Central Prison, Cuddalore, has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed by the

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first respondent in proceedings C2/36540/2007, dated 19.8.2007, set aside the same and to direct the respondents to produce him before this Court and to set at liberty.

3.1. The order of detention dated 19.8.2007 was passed based on the ground case registered in Mailam Police Station Crime No.408 of 2007 for alleged commission of offences under Sections 147, 341, 323, 294(b), 506(ii) and 397 IPC., complaint of which was lodged by one John Mohan. According to the complainant, while he was coming in his motor cycle along with his friend and was parking the same near a hotel, the detenu along with others waylaid them and at the knife point, threatened and forcibly took away Rs.1,500/- from the complainant and snatched the cell phone of his friend. When the complainant raised alarm, the public came to their rescue and tried to apprehend the offenders, but the accused brandished their knives and threatened them to kill if they approach and they also took soda bottles and smashed on the road, thus creating terror in the minds of the public, who ran for safer places, resulting in dislocation of traffic. Taking advantage of the panic situation, the detenu and his associates escaped from the spot. Based on the complaint, investigation was taken up, during which the detenu was arrested and later, sent to Court for judicial remand.

3.2. The first respondent, taking note of the above ground case and finding that the detenu came to the adverse notice of the police authorities attached to the same police station in two cases, viz. in Crime Nos.134/2003 and 491/2006 for various offences including offences under Sections 302 and 307 IPC, having satisfied that there is compelling necessity to detain the detenu in order to prevent him from indulging in such activities, which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non-furnishing of a relied upon document, viz. arrest memo relating to the detetu, which deprived of his opportunity to submit his effective representation and hence, the order of detention vitiates. In support of the same, the learned counsel relied on the decision of the Apex Court in POWNAMMAL v. STATE OF TAMIL NADU AND ANOTHER [A.I.R. 1999 SC 618].

5. We have heard the learned Additional Public Prosecutor on the above point and perused the materials placed before us.

6. In POWNAMMAL v. STATE OF TAMIL NADU, cited supra, where the Tamil version of the remand order, which is a relied upon document was not supplied to the detenu even though it was demanded by the detenu, the Apex Court held thus -

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" 15. Adverting to the facts of this case, the appellant has made a representation for supply of Tamil version of the copy of order of remand and specifically stated that the detenue could not understand English language. Admittedly, Tamil version of order of remand was not furnished to her. A perusal of the grounds shows that the order of remand was relied upon by the second respondent to reach subjective satisfaction, so the detenue need not show that any prejudice was caused to her due to non-supply of the Tamil version of order of remand. Therefore, the High Court is not correct in holding that non-furnishing of the copy of the order of remand would not in any way prejudice the detenue."

7. Concededly, in the instant case, a perusal of the paper book placed before us shows that the detenu was furnished with a copy of arrest memo relating to one Elumalai, who is a co-accused in the case, showing that he was arrested on 28.7.2007 at 10.00 hours and there is no material relating to the arrest memo of the detenu, which forms the basic document for the detaining authority to substantiate that he was arrested in Crime No.408 of 2007 and was kept under valid custody at the time of passing the order of detention. The non-furnishing of the said material document, viz. arrest memo relating to the detenu, in our considered opinion, amounts to deprivation of the right of the detenu to submit his effective representation and hence, the same rendered the detention illegal.

In the result, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
of Tamil Nadu, Prohibition and
Excise Department, Fort St. George,
Chennai 600 009.

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2. The District Collector and
   District Magistrate, Villupuram
   District, Villupuram.

3. The Superintendent
   Central Prison, Cuddalore.

4. The Public Prosecutor,
   High Court, Madras.

5.The Joint Secretary to Govt,
  Public (Law & Order) Department,
  Fort St George, Chennai.
  ASM (co)
  sg 07/01/08

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